IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 137 OF 1993

Shri Hari Ravba Palve ..Appellant

versus

1. Punja Mhatarba Palve
2. Anna Mhatarba Palve
3. Sakhubai Mhatarba Palve ..Respondents

Mr. V. Z. Kankaria for the Appellant.

Mrs. V. D. Kamat h/f. P. M. Pradhan for the Respondent Nos.1 to 3.

CORAM : D. G. DESHPANDE,J.

DATE : 11TH JANUARY,2005.

ORAL ORDER :

1. Heard learned counsel for the appellant and the respondents.

2. This appeal is filed by the original claimant against the order of the Joint District Judge, Nashik dated 27.6.1991 distributing the compensation as 1/4th to the appellant Hari and remaining 3/4th to the respondents. Therefore this is an appeal about apportionment of the compensation about which

Reference under Section 30 was made.

3. Counsel for the appellant repeatedly and strenuously urged that the appellant has filed certain documents before the S.L.A.O.. One of the documents being an agreement arrived at between the parties where the respondents had agreed to give to the appellant 50% of the compensation amount i.e. equivalent to 8 anna share. Those documents, namely, the agreement and application to the S.L.A.O. etc. were produced before me and counsel for the appellant wanted that the court should take those documents on record, accept them at their face value and accept that there was such an agreement between the parties where the respondents had agreed to a situation as mentioned in the said agreement, and, alter the judgment of the trial court. He also added that those documents were given to the S.L.A.O. and now therefore they should be considered. No where in the Reference any apportionment is made at the instance of the appellant. There is no mention of any such documents. In his evidence the appellant has not uttered a word about there being any agreement between the parties duly signed, affirmed and accepted by the respondents. These documents may be with the S.L.A.O. when the Reference was made but when the lower court was required to decide it, the

appellant did not tender or produce those documents nor did he referred to them in his deposition when the appellant came before the court for claiming apportionment of the compensation of a particular amount. The burden lied upon the appellant to prove his case. Neither in a Reference nor in the evidence nor in the pleadings there is any reference to any such documents. Therefore these documents are not forming part of the record of the lower court therefore they cannot be looked into nor considered.

4. My attention was then drawn by the counsel for the appellant to the evidence of appellant Hari. He has been shattered in the cross examination where he has stated **"... It is correct that Ravba and Mhataraba have effected partition of the ancestral land during their life time. It is correct that the present gat No. 422 was previously gat No. 421. It is correct that the southern portion of the gat No. 422 went to the share of Ravba, while northern portion of gat No. 421 went to the share of the Mahatarba. It is correct that after the partition, KHATAS were separated.....It is correct that southern portion of gat No. 422 is acquired by the Government."** After admitting all these things Hari stated in his evidence **"It is not correct that mutation entries were made in the 7x12 extract of**

the land as per the partition." According to him 7/12 extract produced by the respondents before the lower court were wrong. Therefore, this is a case where Hari - the appellant is trying to claim something against the revenue record. Lower court therefore rightly declined to interference. No interference is called for. Appeal is dismissed with costs.

11.1.2005 (D.G. DESHPANDE,J.)